

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHENG XIA WANG, CHUNLIN ZHANG, JUN
QING ZHAO, BAO GUO ZHANG, ZE JUN
ZHANG A/K/A ZEJUN ZHANG, GUOYI WANG,
TONG WEI WU, AND ZHI QIANG LU, ON
BEHALF OF THEMSELVES AND OTHERS
SIMILARLY SITUATED,

Plaintiffs,

v.

SHUN LEE PALACE RESTAURANT, INC. D/B/A
SHUN LEE PALACE; T&W RESTAURANT, INC.
D/B/A SHUN LEE WEST; JOHN HWANG;
MICHAEL TONG; BIN HU; AND WILLIAM
HWANG

Defendants.

Index No. 17-cv-00840

DECLARATION OF
JOHN MA

I, John Ma, do hereby swear, affirm, and attest under the penalties of perjury as follows:

1. I am over 18 years of age and competent to testify to the matters stated in this declaration.
2. The information contained herein is based upon my personal knowledge.
3. I work at Shun Lee West, which operates a Chinese restaurant located at 43 West 65th Street, New York, NY 10023 ("Shun Lee West"). I have worked at Shun Lee West since 1993.
4. When I began working at Shun Lee West, I was employed in the position of Captain. Since 1995, I have been employed as a Manager. I manage the waiters at Shun Lee West only. Currently, there are approximately 23 or 24 waiters employed at Shun Lee West.

5. The waiters are all full-time employees. When waiters work more than 40 hours a week, they are paid overtime.

6. The waiters at Shun Lee West are not unionized employees. In fact, there are no unionized employees at Shun Lee West.

7. I do not manage the delivery workers, kitchen workers or any other group at Shun Lee West. The delivery workers and kitchen staff have their own manager. However, I do know that the delivery workers have their own tip pool that is separate and apart from the waiters. Additionally, other employees, like dishwashers, kitchen chefs and other staff, and cashiers are paid separately and differently from the waiters as well.

8. I also do not manage any waiters from the Shun Lee East Restaurant. Shun Lee West and Shun Lee East operate separately, have different customers, and employ different employees.

9. I am responsible for closing Shun Lee West on Mondays, Tuesdays, Wednesdays, and Sundays. The other days are closed by another manager who also works at Shun Lee West.

10. Part of my job duties includes handling customer complaints. I also have the authority to approve vacation, time-off, and sick time requested by the waiters. I also manage and organize the waiters' work schedule.

11. I rarely have to deal with complaints or issues between the waiters.

12. Waiters are paid the tipped minimum wage and also are part of a tip pool. If waiters worked more than 40 hours, they will be paid an overtime premium based on their regular rate with a tip credit properly applied. There are various waiter tip pools at Shun Lee West. Specifically, the waiters are usually pooled in a group of three waiters and

are assigned to cover a certain jurisdiction within Shun Lee West. Each group of waiters then splits the tips among themselves for the actual shift worked.

13. During the early shift, I usually have two groups of three waiters present to service customers. However, on Mondays and Tuesdays, when things are slower at Shun Lee East, I usually only have one group of four waiters working.

14. During the middle shift, I only have three people working in total.

15. During the late shift, I normally have two groups of three. Occasionally, when Shun Lee West is busy, I have a third group of three waiters there to work.

16. At times, I may have to combine the groups (this may occur if two or more people are out during the same shift). For example, if a person wants to take a day off, I can redistribute the groupings of waiters such that what were once two groups of three waiters may now be one group of five waiters.

17. I do not review or handle any tips earned by the waiters. I have no involvement whatsoever with tips.

18. In or around October 2015, Michael Tong sold Shun Lee West to Bin Hu. Prior to the sale of Shun Lee West, Mr. Tong never hired or fired any of the waiters at Shun Lee West and never organized any interviews with potential waiters or working schedules of waiters.

19. Currently Mr. Hu is not (and formerly Mr. Tong was) not involved in my day to day job duties and responsibilities.

20. Mr. Hu lives in China and is never in the restaurant at Shun Lee West.


21. I verify that the statements within this declaration are true and correct to the best of my knowledge, information, and belief. I have been given a full opportunity to

review this declaration carefully and freely and make any corrections and additions of any kind.

22. This declaration has been translated to me in my native language of Chinese.

PURSUANT TO 28 U.S.C. § 1746, I VERIFY UNDER THE PENALTY OF PERJURY, UNDER THE LAWS OF THE UNITED STATES OF AMERICA, THAT THE FOREGOING IS TRUE AND CORRECT.

Date: March 21, 2018



John Ma

美国纽约南区
联邦地区法院

CHENG XIA WANG、CHUNLIN ZHANG、JUN
QING ZHAO、BAO GUO ZHANG、ZE JUN
ZHANG（又名 ZEJUN ZHANG）、GUOYI
WANG、TONG WEI WU 和 ZHI QIANG LU 代表
他们本人及其他有类似境遇的人，

原告，

诉

SHUN LEE PALACE RESTAURANT, INC.（也称
SHUN LEE PALACE）、T&W RESTAURANT,
INC.（也称 SHUN LEE WEST）、JOHN
HWANG、MICHAEL TONG、BIN HU 和
WILLIAM HWANG

被告。

索引号 17-cv-00840

JOHN MA
的声明

我 John Ma 特此发誓、确认并证实如下事项（如作伪证，愿接受处罚）：

1. 我已年满 18 岁，具有证明本声明中陈述的事项的法定资格。
2. 本声明中所含信息基于我的个人认识。
3. 我在于纽约西第 65 街 43 号 (NY 10023) 运营中餐厅的 Shun Lee West（“Shun Lee West”）工作。自 1993 年以来，我一直在 Shun Lee West 工作。
4. 在我开始在 Shun Lee West 工作时，我的受聘职位是领班。自 1995 年以来，我被聘为经理。我仅管理 Shun Lee West 的服务员。目前，Shun Lee West 聘用了大约 23 或 24 名服务员。
5. 服务员都是全职员工。如果服务员每周工作超过 40 个小时，他们会获得加班工资。

6. Shun Lee West 的服务员不是参加工会的员工。事实上，在 Shun Lee West，没有参加工会的员工。

7. 我不管理 Shun Lee West 的送餐员、厨房工作人员或任何其他群体。送餐员和厨房员工有他们自己的经理。不过，我知道送餐员有他们自己的小费池，与服务员的小费池是分开的。此外，其他员工，例如洗碗工、厨房厨师和其他员工，以及收银员的报酬也是与服务员的报酬分开的。

8. 我也不管理 Shun Lee East 餐厅的任何服务员。Shun Lee West 与 Shun Lee East 分开运营，具有不同的顾客，聘用不同的员工。

9. 我负责在星期一、星期二、星期三和星期日关闭 Shun Lee West。在其他时间，由也在 Shun Lee West 工作的其他经理负责关闭。

10. 我的部分工作职责包括处理顾客投诉。我也有权批准服务员申请的休假、请假和病假。我还管理和安排服务员的工作时间安排。

11. 我很少需要处理服务员之间的抱怨或问题。

12. 服务员按有小费的最低工资支付工资，也有份平分小费池。如果服务员工作超过 40 个小时，他们将根据正常工资率获得加班津贴，并适当应用小费信用。在 Shun Lee West，有不同的服务员小费池。具体来说，通常由三名服务员为一组形成一个小费池，并被分配到 Shun Lee West 的某个管辖范围内。然后，每组服务员彼此分享他们在实际工作班次内挣得的小费。

13. 在早班期间，我通常安排两组服务员（每组三人）在场为顾客提供服务。然而，在星期一和星期二，当 Shun Lee East 的客流量比较少时，我通常只安排一组服务员（四人）工作。

14. 在中班期间，我总共只安排三个人工作。

15. 在晚班期间，我通常安排两组服务员（每组三人）。偶尔，当 Shun Lee West 客流量大时，我会安排三组服务员（每组三人）工作。

16. 有时，我可能必须将各组组合起来（如果在同一个班次中有两个或多个人外出，可能会发生这种情况）。例如，如果某个人想请假一天，我可以重新分配服务员的分组，这样，原来由三名服务员一组组成的两个组现在可能是由五名服务员组成的一个组。

17. 我不查看或处理服务员挣得的任何小费。我也不参与有关小费的任何事情。

18. 在 2015 年 10 月前后，Michael Tong 将 Shun Lee West 出售给了 Bin Hu。在出售 Shun Lee West 之前，Tong 先生从未聘用或解雇过 Shun Lee West 的任何服务员，也从未安排过对可能的服务员的任何面试或服务员的工作时间安排。

19. 现在的 Hu 先生（以及以前的 Tong 先生）从不参与我的日常工作职责和责任。

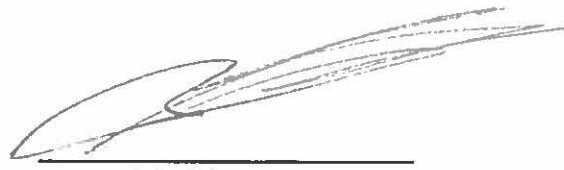
20. Hu 先生居住在中国，从来不在 Shun Lee West 餐厅。

21. 根据我的认识、信息和信念，我确认本声明中的任何陈述都真实且准确。我被给予了充分的机会来仔细且无拘束地审查本声明，并作出任何形式的更正和补充。

22. 已经为我以我的母语中文对本声明进行了翻译。

根据美国法典第 28 卷第 1746 条，我确认上述内容真实且准确（如作伪证，愿根据美国法律接受处罚）。

日期：2018 年 3 月 29 日

A handwritten signature in black ink, consisting of a stylized 'J' followed by a series of horizontal strokes, positioned above a solid horizontal line.

John Ma

[ubiquus]

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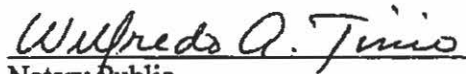
STATE OF NEW YORK)
)
COUNTY OF NEW YORK) ss

CERTIFICATE OF TRANSLATION

This is to certify that the accompanying, to the best of my knowledge and belief, is a true and accurate translation into Chinese (Simplified), completed on March 21, 2018, of "Wang v. Shun Lee_Declaration of John Ma (153430224_4).DOCX," originally written in English.


Despina F. Missetzis
Project Manager
Ubiquus Reporting, Inc.

Sworn to and subscribed before me,
This 21st day of March, 2018.


Notary Public
WILFREDO A. TINIO
Notary Public - State of New York
No. 01T16209278
Qualified in Suffolk County
My Commission Expires July 27, 2021